

Exhibit B

18 PL Esposito rough transcript 2006 05 31.txt
remember the gist.

19 Q. Okay. And am I correct that you are a
20 representative of the sub-class?

21 A. Yes.

22 Q. Are there any other representatives of
23 the sub-class?

24 A. I don't know if these other folks are

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1 representatives of the sub-class. I know that
2 they're representatives of the class, Erickson
3 being the lead Plaintiff, I don't know about
4 Gottlieb and Bittman, I think, they may have
5 been, I don't know.

6 Q. Okay.

7 A. -- who's who.

8 Q. Are you a representative of the class
9 as well or merely with the sub-class?

10 A. I believe the sub-class but possibly
11 the class as well. I'm not sure about that.
12 That's again a legal thing.

13 MR. TUCCILLO: Just one second?

14 (Pause.)

15 MR. LONGMAN: I just wanted to say
16 something for the record in-between.

17 MR. SAVERY: Okay. I don't want
18 anything on the record. If you have an
19 objection you can put it on.

20 MR. TUCCILLO: It's for your benefit.

21 MR. LONGMAN: It's for your benefit
22 and I have the right to put something on the
23 record.

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24 MR. SAVERY: Okay.

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1 MR. LONGMAN: It's possible that Dr.
2 Esposito will also be, is also a proposed
3 representative of the class as well as the
4 sub-class, we may amend our motion.

5 MR. TUCCILLO: Just so you know.

6 MR. LONGMAN: Just so you're aware.

7 MR. TUCCILLO: So you can ask
8 questions today if you want.

9 MR. SAVERY: Well, he apparently
10 doesn't even know this, and he hasn't been
11 proposed as a class representative, he's been
12 identified merely as a representative of a
13 sub-class, so when and if you decide to amend
14 your pleadings to include him as a class
15 representative we'll have to deal with it at
16 that point. But at this point in time, you
17 know, he's not.

18 MR. TUCCILLO: Just for the record
19 we're putting you on notice that as of today our
20 position is that he may be, and if you want to
21 ask any questions appropriate to his being a
22 class representative, we're not going to raise
23 objections ^{against} ~~unmasked~~ you doing so, and we'll
24 handle it as if you were asking questions about

[hand-written correction by
Plaintiffs' Counsel 6/5/06]

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1 the sub-class, that's fine. You can feel free
2 to pursue that today.

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MR. SAVERY: Okay. On the other hand

I reserve the right.

MR. TUCCILLO: We would not agree to produce him again simply on the basis that he is a class representative if we amend it in the near future when you're telling you today we may very well do so.

MR. SAVERY: I'm going to object to this.

MR. TUCCILLO: That's fine.

MR. SAVERY: Because it's clearly improper, he is here as a representative of the sub-class, you presented him in the complaint, in every version of the complaint and in your motion papers as a representative of the sub-class, we've got an opposition due in fewer than 30 days I think or it might be exactly 30 days, so to the extent you're going to amend your papers and propose him as a representative of the class, first of all putting aside any objections to the entire exercise of doing so we're reserving all rights to recall him at that

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point.

MR. TUCCILLO: Understood.

BY MR. SAVERY:

Q. Dr. Esposito, did you have any role in deciding what claims were to be made in any version of the complaint that you've seen?

A. No.

Q. Okay. Did you have any role in

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23 before?

24 A. No.

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1 Q. Showing you Exhibit 42 (handing).

2 Have you seen that document before?

3 A. No.

4 Q. Showing you Exhibit 43 (handing).

5 Have you seen that document before?

6 A. No.

7 Q. Okay.

8 MR. SAVERY: At this point I'm going
9 to suspend my questioning, and to the extent
10 there is any further production of documents
11 relative to this case we reserve the right to
12 continue questions after that further production
13 of documents, or in light of what we, and there
14 have been letters back and forth from counsel
15 about what Defendants perceive to be a
16 deficiency in response to Defendants' discovery
17 requests, but with that I'll complete my
18 questioning for the time.

19 MR. TUCCILLO: Just for the record
20 we're reserving all rights as well. The witness
21 does not intend to appear ^{again} ~~today~~ for a class
22 certification deposition, as we stated before
23 it's possible that he'll be put forward as a
24 representative of the class as well as the

[hand-written correction:
Plaintiffs' counsel 6/5/06]

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1 sub-class, obviously you haven't written your

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opposition about him in either capacity before
3 today's deposition, feel free to ask any
4 additional questions you want today relative to
5 his potential use as a class representative. If
6 we do amend the papers it will be imminently but
7 you're free to ask any and all questions you
8 want today about either capacity, we're not
9 going to produce him again for such questioning.

10 MR. SAVERY: Okay. Well, I object to
11 the concept that you may or may not be changing
12 your designation as to class representative and
13 therefore I have to go about questioning this
14 witness relative to a capacity that he may or
15 may not be serving in the future. So we're
16 reserving all rights to re-open questioning, to
17 the extent that you decide to refile a motion or
18 to put him forward as a representative of the
19 class.

20 MR. LONGMAN: And we're also not
21 producing him again if more documents, our
22 position is that we've complied with your
23 document request.

24 MR. SAVERY: Okay. We're reserving

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1 all rights.

2 MR. HUANG:

3 Q. With that said, Dr. Esposito, I have a
4 few questions, this is going to take less than
5 five minutes.

6 Is it fair to characterize your prior
7 testimony, is it fair to say that your prior